

Howard Hershops  
P.O. Box 190711  
San Francisco, Ca 94119-0711  
(415) 216-8470

In Pro Se

**FILED**  
JUL 31 2008  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Howard Hershops,

CASE No. C-06-6644 JF/RS

Plaintiff

PLAINTIFF HERSHOPS' MOTION TO  
FILE THIRD AMENDED COMPLAINT

vs

The Superior Court of California  
County of Santa Clara et al.

DATE SEPT. 5, 2008

TIME: 9:00 AM

COURTROOM: 3 STHF

Defendants.

Plaintiff Howard Hershops hereby moves this Court for an order for leave to file his Third Amended complaint a copy of which is attached to this motion as Exhibit A.

Plaintiff makes this motion at this time based upon this Court statements made at the June 27, 2008 Status Conference in this very case.

The reasons for this Motion to file a third amended complaint as their additional

1 facts that merit the assertions of additional theories of violations of Federal Law that  
2 developed during the on going criminal and civil complaints brought by Defendant  
3 Steven Todd Kirsch in the Santa Clara County Superior Court.  
4

5 While the there has been a dismissal of the deputy district attorneys in this case  
6 it has been discovered that said the acts of the Deputy District Attorneys are outside  
7 their official duty and have actually violated Federal Criminal Law and have conspired  
8 to violated plaintiff's federal protected constitutional rights.  
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11 Moreover, Judge Jenkins has already ruled that under the authority of **Adam vs**  
12 **Hawaii**, 235 F3rd 1160 (9<sup>th</sup> Cir 2000) requires that the District Court must stay all  
13 proceedings and not dismiss a civil rights complaint while the on going criminal case  
14 is still pending.  
15

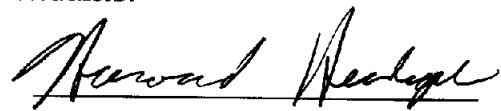
16 In this case the criminal case was filed on November 1, 2005 and there still no  
17 prospect for a fair trial in this case based upon the numerous illegal and unethical  
18 violations of law as stated in the both Title 42 U.S.C. Section 1983 conspiracy to  
19 violate plaintiff's federally protected rights as well as the RICO violations by the  
20 conspiracy to violate RICO by the defendants.  
21  
22

23 This case has been pending for some 34 months and still no prospect for a fair  
24 trial on the merits as the Santa Clara County Superior Court has refused compulsory  
25 service of process for a jury trial and refuses to appoint an expert witness to contest  
26 the capabilities of two purported witnesses to see facial expressions at distance in  
27  
28

1 excess of 350 feet away and done through the sides of two steel doors, which is  
2 physically impossible.  
3

4 There has been no answer filed by any of the defendants in this case and leave  
5 to amend under Rule 15 favoring amendment should be granted in this case as plaintiff  
6 has shown a myriad of violations of plaintiff constitutional rights and also shown  
7 RICO violations of Federal Law by the defendants.  
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9 Dated July 30, 2008



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11 Howard Herships  
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POINTS AND AUTHORITIES

I

THIS CASE IS STILL AT THE PLEADING  
STAGE AND THERE NO PREJUDICE TO  
THE DEFENDANTS AS NO ANSWER HAS  
BEEN FILED BY ANY PARTIES AND  
PLAINTIFF'S THIRD AMENDED COMPLAINT  
STATES CAUSE OF ACTIONS AGAINST  
THE DEFENDANTS.

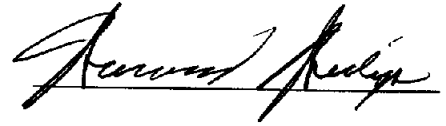
The case which is four square on point on this very subject matter is the case  
of *Adam vs Hawaii 235 F3rd 1160* (9<sup>th</sup> Cir 2000) which holds that a civil rights  
complaint cannot be dismissed and that the plaintiff should be able to file an amended  
complaint correcting any deficiency in the prior complaint.

In this case the Third amended complaint does this as clearly to deprive a party  
of his federal rights to be represented by legal counsel and to have service of the  
moving papers are clearly Due Process Violations.

Moreover, to proceed with a criminal case without any prospect of ever  
obtaining a criminal conviction and done solely to extort money violate Due Process  
of Law.

1           WHEREFORE, plaintiff requests leave to file this Third Amended complaint  
2  
3       under the authority of Adam vs Hawaii, supra.

4  
5       Dated July 30, 2008

A handwritten signature in cursive script, appearing to read "Howard Herships", written over a horizontal line.

Howard Herships

EXHIBIT A

Howard Hershops  
P.O. Box 190711  
San Francisco, California 94119-0711  
(415) 216-8470

In Pro Se

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Howard Hershops

Plaintiff,

vs

Steven Todd Kirsch, Deputy District  
Attorney Mike Adams, Deputy District  
Attorney Pinaki Chakrvatory, Deputy  
District Attorney Jay Boyarsky, Deputy  
District Attorney Maxmilian Zarzana  
and Palo Alto Police Officer  
Carlos De Santiago, Gerald Soreson,.  
David Duperrault and Does 1 through 20

Defendants.

CASE NO. C-06-6644

THIRD AMENDED COMPLAINT  
FOR DAMAGES FOR MALICIOUS  
PROSECUTION UNDER TITLE 42  
U.S.C. SECTION 1983, AND SECOND  
CAUSE OF ACTION CONSPIRACY  
TO VIOLATE PLAINTIFF'S CIVIL  
RIGHTS, AND THIRD CAUSE OF  
ACTION FOR CIVIL RICO TITLE  
18 U.S.C. SECTION 1964 ( c ) AND  
CONSPIRACY TO VIOLATE RICO  
TITLE 18 U.S.C. SECTION 1962 (d).

JURISDICTION

1. This Court has Jurisdiction under Title 28 U.S.C. section 1343 as well as Title 42 U.S. C.  
Section 1983, and Title 18 U.S.C. Section 1964 ( c ) and also has pendent Jurisdiction under Pendent  
Jurisdiction under over State Causes of action.

PARTIES

2 Plaintiff Howard Hershops at all times mentioned herein was and is a defendant in a criminal case  
entitled People of the State of California vs Howard Hershops in Santa Clara County Superior Court case

1 number BB517233 filed on November 1, 2005 and also a defendant in Santa Clara County Superior Court  
2 in case entitled Steven Kirsch vs Howard Herships filed on Oct. 25, 2005.

3 3. Defendant Steven Todd Kirsch requested the Deputy District Attorney's Office for the County  
4 Santa Clara County to bring criminal charges in order to obtain an advantage so that defendant Kirsch  
5 could extort money from the said defendants in the civil suit, and because the pending criminal case was  
6 filed plaintiff had no way to obtain compulsory service of process for the civil case and as such prevented  
7 plaintiff from calling any witnesses.

8 4. Defendant Deputy District Attorneys Mike Adams, Jay Boyarsky, Pinaki Chakrvatory  
9 Maxmilian Zarzana agreed to do so and bring a criminal complaint and done without any propect of  
10 obtaining a criminal conviction.

11 5. Defendants Gerald Sorenson and David Duperrault agreed to testify in this case on behalf of  
12 defendant Kirsch as to preliminary facts which were inherently impossible to observed as the distances  
13 were in excess of 350 feet away, that were e mailed to them by Kirsch prior to the any preliminary hearing  
14 in this criminal case.

15 FIRST CAUSE OF ACTION  
16 CONSPIRACY TO VIOLATE  
17 PLAINTIFF CONSTITUTIONAL RIGHTS

18 6. Defendant Steve Kirsch used his political influence with both the Santa Clara County Superior  
19 Court as well as the Santa Clara County District Attorneys Office to conspire with the Deputy Districts  
20 Attorneys to extort money and injure plaintiff in business and employment in violation of the Hobbs Act.

21 7. Defendant Steve Kirsch conspired with Deputy District Attorneys, Mike Adams, Jay Boyarsky,  
22 Pinaki Chakrvatory and Maxmilian Zarzana, while operating under color of state law to bring criminal  
23 charges against both plaintiff Herships and co/defendant Heartwell so that Defendant Kirsch could gain an  
24 advantage so that defendant Kirsch could gain an advantage in the civil suit he had already filed against both  
25 Herships and Heartwell in Santa Clara County Superior Court and which is in violation of Rule 5-100 (A)  
26 of the State Bar Rules of Professional Conduct.

27 8. Defendants Deputy District Attorneys, Mike Adams, Jay Boyarsky, Pinaki Chakrvatory and  
28 Maxmilian Zarzana then agreed to said conspiracy with Defendant Kirsch to deprive plaintiff Herships of  
Constitutional rights by presenting a request to Santa Clara County Superior Court Judge Rise J Pichon



1 for issuance of felony arrest warrant on Nov. 1, 2005 knowing fully well that Judge Pichon had extensive  
2 involvement with the Kirsch Foundation through Judge Pichon's relationship with Martha Kanter who was  
3 the Secretary to the Kirsch Foundation and its Board Member and who also was Judge Pichon's husband  
4 direct supervisor at De Anza College. These acts violated plaintiff's Herships rights to a neutral magistrate  
5 to review any issuance of an arrest warrant.

6 9. Judge Pichon then on January 18, 2006, in the criminal case number BB517233 at the request  
7 of the Defendant Deputy District Attorney Jay Boyarsky, in furtherance of this conspiracy requested that  
8 the felony charges against plaintiff's co/defendant Katrina Heartwell be reduced to a misdemeanor and then  
9 to permit defendant Kirsch to enter into a civil compromise with co/defendant Heartwell and to obtain a  
10 dismissal of all criminal charges.

11 10 That all times mentioned herein on January 18, 2006 in criminal case number BB517233  
12 Herships was not represented by legal counsel and had not waived legal counsel and had never been  
13 served any moving papers and still Judge Pichon permitted the proceedings to proceed in violation of  
14 Plaintiff Herships federally protected rights and dismissed co/defendant Heartwell as a defendant in the  
15 criminal case.

16 11. Defendant Kirsch in support of said civil compromise under California Penal Code Sections  
17 1377-1379 signed a declaration under penalty of perjury that he (Kirsch) had been fully satisfied criminal  
18 defendant Katrina Heartwell and then Judge Pichon dismissed all criminal charges as to Heartwell on

19 12. Defendant Deputy District Attorneys Maxmilian Zarzana and Pinaki Chakrvatory and in further  
20 conspiracy with defendant Kirsch, at all times hereafter the dismissal of Heartwell as a criminal defendant  
21 proceeded with the criminal prosecution against plaintiff Herships knowing full well that there was absolutely  
22 no prospect of obtaining a criminal conviction in this case.

23 13. Defendant District Attorney Pinaki Chakrvatory in further conspiracy with defendant Kirsch  
24 offered to plaintiff Herships in open court that the very same deal that was given to co/defendant Heartwell  
25 is offered to Herships.

26 14. Defendant Deputy District Attorneys Mike Adams, Jay Boyarsky, Pinaki Chakrvatory  
27 Maxmilian Zarzana deal that was offered to Heartwell required Heartwell to pay defendant Kirsch  
28 \$20,000.00 in order to require a dismissal of all criminal charges and this same deal was at all times open

1 to plaintiff Herships herein could obtain a dismissal of all criminal charges upon payment of \$20,000.00  
2 which is extortion in violation of the Hobbs Act and Rule 5-100 (A) of the Rules of Professional Conduct.

3 15. Defendant Kirsch even after obtaining payment from Heartwell and acknowledgment in the  
4 criminal case that he was fully satisfied by Heartwell for all claims that Kirsch had against Heartwell,  
5 defendant Kirsch never filed a satisfaction of judgment into the Santa Clara County Superior Court in case  
6 number 02-05-SC0288 and as such there is still an outstanding judgment against Heartwell..

7 16. Defendant Kirsch in furtherance of the conspiracy with Defendants Deputy District Attorneys,  
8 Mike Adams, Jay Boyarsky, Pinaki Chakrvatory and Maxmilian Zarzana and done to obtain an advantage  
9 in the civil case against plaintiff Herships, by filing the criminal case defendant Kirsch knew full well that  
10 Herships would not be able to obtain witnesses on his behalf as by maintaining a criminal case then the  
11 criminal defendant would not be able to obtain compulsory service of process to call witnesses at trial in  
12 the civil case and as being a small claims case as well there was no appeal of right.

13 17. Defendants tactics in prosecution of the criminal case against Herships was an orchestrated  
14 attempt by Defendant Deputy District Attorneys Mike Adams, Jay Boyarsky, Pinaki Chakrvatory ,  
15 Maxmilian Zarzana effort to make plaintiff Herships plead out and done to extort money from plaintiff  
16 Herships on behalf of defendant Kirsch.

17 18. Defendant Deputy District Attorneys Mike Adams, Jay Boyarsky, Pinaki Chakrvatory  
18 Maxmilian Zarzana also permitted defendant Kirsch to E mail to defendants Soerson and Duppraul just  
19 what defendant Kirsch wanted them to testify to at the Preliminary hearing in the criminal case.

20 19. Plaintiff Herships discovered in Oct. 2006, of the connection between defendant Kirsch and  
21 Judge Pichon and when plaintiff Herships addressed the problem that plaintiff herein had with said  
22 connection Judge Pichon informed plaintiff that it was his duty to investigate it and the Judge had no duty  
23 to disclose.

24 20 Plaintiff as a direct result of said refusal to disclose by Judge Pichon plaintiff filed a "statement  
25 of disqualification " which Judge Pichon disqualified herself and stuck all orders issued in the case

26 21. Defendant Deputy District Attorneys Mike Adams, Jay Boyarsky, Pinaki Chakrvatory  
27 Maxmilian Zarzana have and are prosecuting this criminal case and done with no prospect of ever obtaining  
28 a criminal conviction was the record clearly shows that defendants Sorenson and Duperrault in furtherance

1 of this conspiracy testified that they could see the left hand side of Kirsch car when in fact the Kirsch's car  
 2 was not in their direct view and was some 350 feet away and at said distances a party loses all facial  
 3 recognition.

4 22. Defendant Deputy District Attorneys Mike Adams, Jay Boyarsky, Pinaki Chakrvatory  
 5 Maxmilian Zarzana sole purpose in maintaining a criminal prosecution for some 34 months is to protect  
 6 defendant Steve Kirsch and allow him to extort money and to deprive plaintiff of his federally protected  
 7 rights to fair and speedy trial on the merits in both the criminal case and the civil complaint.

8 23. Defendant Deputy District Attorneys Mike Adams, Jay Boyarsky, Pinaki Chakrvatory  
 9 Maxmilian Zarzana agreed to do these acts on behalf of defendant Steve Kirsch based upon political  
 10 influence that defendant Kirsch asserts over both the District Attorney's Office and the Superior Cour

11 SECOND CAUSE OF ACTION  
 12 CONSPIRACY TO VIOLATE RICO  
 13 TITLE 18 U.S.C. § 1962 (d)

14 24. Plaintiff realleges paragraphs 1-23 of the first cause of action into this second cause of action  
 15 or a conspiracy to violate RICO.

16 25. Defendant Kirsch sough and conspired with Defendant Deputy District Attorneys Mike Adams,  
 17 Jay Boyarsky, Pinaki Chakrvatory and Maxmilian Zarzana on going to this day under color of official right  
 18 as prosecutors in Santa Clara County and done solely to extort money under threats of the ongoing  
 19 criminal prosecution in violation of Title 18 U.S.C. Section 1951 (2).

20 26. Defendant Kirsch entered into a enterprise association with the Santa Clara County District  
 21 Attorneys Office to co-operate in bring a criminal complaint against plaintiff Herships and done in  
 22 furtherance extort money from plaintiff Herships and injured plaintiff in business by using the Santa Clara  
 23 County District Attorney's Office under color o official right which are predicated acts under RICO  
 24 pursuant to Title 18 U.S.C. Section 1961.

25 27. Defendant Deputy District Attorneys Mike Adams, Jay Boyarsky, Pinaki Chakrvatory  
 26 Maxmilian Zarzana at all times mentioned herein used their position as Deputy District Attorney for the  
 27 County of Santa Clara while under color of official right to force plaintiff Herships to make payments to  
 28 defendant Kirsch for damages to his car when in fact defendant Kirsch has already been fully satisfied by  
 Heartwell and still persist in bring criminal charges and done with no prospect for any conviction in the

1 criminal case.

2 28. Defendant Deputy District Attorneys Mike Adams, Jay Boyarsky, Pinaki Chakrvatory  
3 Maxmilian Zarzana at all times were knew and agreed to continue to agree to make offers to plaintiff  
4 Herships of just pay defendant Kirsch money for the damages caused by Hearwell and the criminal case  
5 will go away.

6 29. Defendant Deputy District Attorneys Mike Adams, Jay Boyarsky, Pinaki Chakrvatory  
7 Maxmilian Zarzana agreed to bring the criminal case against plaintiff and done solely so that defendant  
8 Kirsch could obtain an advantage in a civil suit and done solely for the purposes of extortion in violation  
9 of California Rules of Professional Conduct Rule 5-100 (A), as the California Supreme Court has classified  
10 said conduct as extortion.

11 30. In fact Defendant Deputy District Attorneys Mike Adams, Jay Boyarsky, Pinaki Chakrvatory  
12 and Maxmilian Zarzana have at all times permitted Kirsch to enter into said civil compromise with  
13 co/defendant Heartwell and all criminal charges have been dismissed upon payment of \$20,000.00 and  
14 which is actually a criminal violation of California law, i.e. compounding ( Penal Code Section 153.)

15 31. Plaintiff has been injured by reason of these racketeering activities of defendants herein as  
16 plaintiff has made numerous court appearances over the last 34 months and has spend money to do so and  
17 has been denied any and every opportunity to start a business activities by reason of the continuing  
18 violations of plaintiff rights by all of the defendants subject to proof.

19 32. Defendant Deputy District Attorneys Mike Adams, Jay Boyarsky, Pinaki Chakrvatory  
20 Maxmilian Zarzana manage the affairs of the enterprise between the District Attorneys Office of Santa  
21 Clara County and as such have maintained and continue to maintain the prosecution of a criminal case  
22 under official rights and done sole to extort money from plaintiff for defendant Kirsch.

23 33. Defendant Deputy District Attorneys Mike Adams, Jay Boyarsky, Pinaki Chakrvatory  
24 Maxmilian Zarzana agreed to do these acts of extort money on behalf of Kirsch based upon the influence  
25 that Kirsch gives out numerous grants to various Santa Clara County entities through his foundation the  
26 Kirsch Foundation.

1 WHEREFORE, plaintiff requests judgment against defendants for this conspiracy to violate  
2 plaintiff's constitutional rights and conspiracy to violate RICO.

3 1. For the willful violation of Plaintiff Constitutional Rights

4 2. For damages property and business subject to proof under RICO

5 3. For Three Fold Damages pursuant to Title 18 U.S.C. Section 1964 ( c )

6 4. For the Cost of this action

7 5. For such further relief as this Court deems just.

8  
9 Dated July 30, 2008

10 \_\_\_\_\_  
Howard Herships

PROOF OF SERVICE BY MAIL

I DECLARE AS FOLLOWS:

I AM NOT A PARTY TO THE WITHIN ACTION:

That I reside in the State of California.

That I placed a true and correct copy of the Motion Leave to File Third Amended Complaint and Opposition to Defendant Steve Kirsch Motion to Dismiss in a sealed envelops addressed as follows:

John C Brown  
Redenbacher & Brown LLP  
580 California St Ste 1600  
San Francisco, CA 94104

Santa Clara County Counsel  
John Winchester  
71 West Hedding 9<sup>th</sup> Floor  
East Wing  
San Jose Ca 95110

I then deposited the said envelops in the U.S. Mail Box on July 31, 2008 in San Francisco, California with first class postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that all of the foregoing is true and correct.

Dated July 31, 2008

